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Agenda item 5
Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory

Algeria, Bahrain, Bangladesh, Belize, Brunei Darussalam, Comoros, Cuba, Djibouti, Egypt, Guinea, Indonesia, Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Jamahiriya, Malaysia, Mauritania, Morocco, Namibia, Oman, Pakistan, Qatar, Saudi Arabia, Senegal, Somalia, South Africa, Sudan, Syrian Arab Republic, Tunisia, United Arab Emirates, Yemen and Palestine: revised draft resolution

Advisory Opinion of the International Court of Justice on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, including in and around East Jerusalem

The General Assembly,

Guided by the principles enshrined in the Charter of the United Nations,

Considering that the promotion of respect for the obligations arising from the Charter and other instruments and rules of international law is among the basic purposes and principles of the United Nations,

Recalling General Assembly resolution 2625 (XXV) of 24 October 1970, on the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,

Reaffirming the illegality of any territorial acquisition resulting from the threat or use of force,

Recalling the Regulations annexed to the Hague Convention respecting the Laws and Customs of War on Land, of 1907,[1]

[1] See Carnegie Endowment for International Peace, *The Hague Conventions and Declarations of 1899 and 1907* (New York, Oxford University Press, 1915).

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Recalling also the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949,[2] and relevant provisions of customary law, including those codified in Protocol I Additional to the Geneva Conventions,[3]

Recalling further the International Covenant on Civil and Political Rights,[4] the International Covenant on Economic, Social and Cultural Rights[4] and the Convention on the Rights of the Child,[5]

Reaffirming the permanent responsibility of the United Nations towards the question of Palestine until it is resolved in all aspects in a satisfactory manner on the basis of international legitimacy,

Recalling relevant Security Council resolutions, including resolutions 242 (1967) of 22 November 1967, 338 (1973) of 22 October 1973, 446 (1979) of 22 March 1979, 452 (1979) of 20 July 1979, 465 (1980) of 1 March 1980, 476 (1980) of 30 June 1980, 478 (1980) of 20 August 1980, 904 (1994) of 18 March 1994, 1073 (1996) of 28 September 1996, 1397 (2002) of 12 March 2002, 1515 (2003) of 19 November 2003 and 1544 (2004) of 19 May 2004,

Recalling also the resolutions of its tenth emergency special session on illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory,

Reaffirming the most recent resolution of the fifty-eighth session of the General Assembly, resolution 58/292 of 6 May 2004, on the status of the Occupied Palestinian Territory, including East Jerusalem,

Reaffirming also the right of the Palestinian people to self-determination, including their right to their independent State of Palestine,

Reaffirming further the commitment to the two-State solution of Israel and Palestine, living side by side in peace and security within recognized borders, based on the pre-1967 borders,

Condemning all acts of violence, terrorism and destruction,

Calling upon both parties to fulfil their obligations under relevant provisions of the road map, the Palestinian Authority to undertake visible efforts on the ground to arrest, disrupt and restrain individuals and groups conducting and planning violent attacks and the Government of Israel to take no actions undermining trust, including deportations and attacks on civilians and extrajudicial killings,

Reaffirming that all States have the right and the duty to take actions in conformity with international law and international humanitarian law to counter deadly acts of violence against their civilian population in order to protect the lives of their citizens,

Recalling its resolution ES-10/13 of 21 October 2003, in which it demanded that Israel stop and reverse the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem,

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[2] United Nations, *Treaty Series*, vol. 75, No. 973.

[3] Ibid., vol. 1125, No. 17512.

[4] See resolution 2200 A (XXI), annex.

[5] Resolution 44/25, annex.

Recalling also its resolution ES-10/14 of 8 December 2003, in which it requested the International Court of Justice to urgently render an advisory opinion on the following question:

> "What are the legal consequences arising from the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, as described in the report of the Secretary-General, considering the rules and principles of international law, including the Fourth Geneva Convention, of 1949, and relevant Security Council and General Assembly resolutions?"

Having received with respect the Advisory Opinion of the International Court of Justice on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*,[6] rendered on 9 July 2004,

Noting in particular that the Court replied to the question put forth by the General Assembly in its resolution ES-10/14 as follows:[7]

> "A. The construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated regime, are contrary to international law;
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> "B. Israel is under an obligation to terminate its breaches of international law; it is under an obligation to cease forthwith the works of construction of the wall being built in the Occupied Palestinian Territory, including in and around East Jerusalem, to dismantle forthwith the structure therein situated, and to repeal or render ineffective forthwith all legislative and regulatory acts relating thereto, in accordance with paragraph 151 of this Opinion;
>
> "C. Israel is under an obligation to make reparation for all damage caused by the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem;
>
> "D. All States are under an obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance in maintaining the situation created by such construction; all States Parties to the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949 have in addition the obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention;
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> "E. The United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall and the associated regime, taking due account of the present Advisory Opinion."

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[6] A/ES-10/273 and Corr.1.

[7] Ibid., para. 163.

Noting that the Court concluded that "the Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law",[8]

Noting also the statement made by the Court that "Israel and Palestine are under an obligation scrupulously to observe the rules of international humanitarian law, one of the paramount purposes of which is to protect civilian life",[9] and that "in the Court's view, this tragic situation can be brought to an end only through implementation in good faith of all relevant Security Council resolutions, in particular resolutions 242 (1967) and 338 (1973)",[9]

Considering that respect for the International Court of Justice and its functions is essential to the rule of law and reason in international affairs,

1. *Acknowledges* the Advisory Opinion of the International Court of Justice of 9 July 2004 on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*,[6] including in and around East Jerusalem;

2. *Demands* that Israel, the occupying Power, comply with its legal obligations as mentioned in the Advisory Opinion;

3. *Calls upon* all States Members of the United Nations to comply with their legal obligations as mentioned in the Advisory Opinion;

4. *Requests* the Secretary-General to establish a register of damage caused to all natural or legal persons concerned in connection with paragraphs 152 and 153 of the Advisory Opinion;

5. *Decides* to reconvene to assess the implementation of the present resolution, with the aim of ending the illegal situation resulting from the construction of the wall and its associated regime in the Occupied Palestinian Territory, including East Jerusalem;

6. *Calls* on both the Government of Israel and the Palestinian Authority to immediately implement their obligations under the road map, in cooperation with the Quartet, as endorsed by Security Council resolution 1515 (2003), to achieve the vision of two States living side by side in peace and security, and emphasizes that both Israel and the Palestinian Authority are under an obligation scrupulously to observe the rules of international humanitarian law;

7. *Calls upon* all States Parties to the Fourth Geneva Convention of 1949[2] to ensure respect by Israel for the Convention, and invites Switzerland, in its capacity as the depositary of the Geneva Conventions, to conduct consultations and to report to the General Assembly on the matter, including with regard to the possibility of resuming the Conference of High Contracting Parties to the Fourth Geneva Convention;

8. *Decides* to adjourn the tenth emergency special session temporarily and to authorize the President of the General Assembly at its most recent session to resume its meeting upon request from Member States.

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[8] Ibid., para. 120.
[9] Ibid., para. 162.